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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1665

Introduced by Assembly Member Laird

February 22, 2005

An act to amend Sections 12878, 12878.1, 12878.21, and 12878.23 of, to add Sections 8306, 8612, 8613, 12585.11, and 12585.12 to, ~~to add Chapter 5.5 (commencing with Section 8865) to,~~ and to add Chapter 9 (commencing with Section 9110) to, Part 4 of Division 5 of, the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as amended, Laird. Water resources.

(1) The Department of Water Resources (department) performs various flood control activities throughout the state. Existing law authorizes the Reclamation Board (board), an agency established within the department, to engage in various flood control activities

along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.

This bill would authorize the department to provide meals and other necessary support to any person engaged in emergency flood fight activities, as defined, on behalf of, or in cooperation with, the department. The bill would require the department, on or before December 31, 2007, to prepare, and the board to adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage. The bill would authorize the board or the department to establish a program of mitigation banking for the activities of the board or the department and for the benefit of local districts in the discharge of specified flood control responsibilities. The bill would require the department to prepare, and the board to adopt, a flood control system status report, to be updated periodically, for the State Plan of Flood Control and to undertake a related inspection of specified levees.

~~The bill would authorize the board or the department to adopt plans and estimates of costs for extraordinary maintenance, as defined, on behalf of project levees, channels, and floodways, and to carry out those plans. The bill would authorize the board to levy special benefit assessments upon certain lands protected by the State Plan of Flood Control that the Legislature would find are specially benefited. The bill would require a separate special benefit assessment for extraordinary maintenance for lands in the Sacramento Valley and a separate special benefit assessment for lands in the San Joaquin Valley. The bill would prohibit the aggregate amounts of assessments levied in each valley from exceeding specified amounts per year, not to commence before July 1, 2009, and would double the authorized limits on and after July 1, 2017. The bill would require the board to adopt regulations for establishing, allocating, and levying assessments pursuant to these provisions. The bill would require the county in which the assessed lands are located to collect, on behalf of the board, the amounts certified by the department to be raised pursuant to the levy of assessments.~~

The bill would require the department, on or before September 1, 2009, and on or before September 1 of each year thereafter, to provide written notice to each landowner whose property is determined to be

within a levee flood protection zone, as defined. The bill would require the department to prepare, update, and maintain maps for levee flood protection zones.

The bill would require, on or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee, as defined, to prepare and submit to the department a specified report of information for inclusion in periodic flood management reports prepared by the department. *By establishing these requirements on a local agency, the bill would impose a state-mandated local program.* The bill would require the department, on or before December 31, 2007, to prepare and transmit to the board a report on project levees that are operated and maintained by each local agency using certain information. The bill would specify that a local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee.

(2) Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects. Existing law, except as otherwise provided, requires the Reclamation Board to give assurances satisfactory to the Secretary of the Army that local cooperation as required by federal law will be furnished by the state in connection with described flood control projects.

This bill would authorize the department or the board, upon appropriation, to advance funds to the federal government or perform flood control and environmental restoration project planning, design, and construction in advance of the federal government and seek reimbursement or credit from the federal government for the cost of that work determined by the federal government to be eligible for reimbursement or credit. The bill would authorize the department or the board to participate with the federal government or local agencies in the design of environmental enhancements associated with a federal flood control project and participate in the construction of environmental enhancements associated with a federal flood control project for which the state has authorized state participation. The bill would require the state to pay 50% of the nonfederal share of environmental enhancement.

(3) Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the department in

connection with the formation of a maintenance area on behalf of a federal flood control project unit. Under existing law, the department and the board are not required to form a maintenance area if neither agency has given the nonfederal assurances to the United States required for the project, except as otherwise provided for a project for which an application for the formation of the maintenance area has been submitted on or before July 1, 2003. Existing law prescribes requirements relating to the imposition of assessments on behalf of a maintenance area. Existing law requires the funds generated by the imposition of the assessments to be deposited in the Water Resources Revolving Fund and continuously appropriates those funds to pay the operation and maintenance costs of maintenance areas. Existing law provides for the dissolution of a maintenance area.

This bill would delete the provisions relating to the formation of a maintenance area for a project for which an application for the formation of a maintenance area has been submitted on or before July 1, 2003. The bill would prohibit the department from performing certain work in connection with the formation of a maintenance area requested by a local agency until the local agency requesting the formation of the maintenance area pays to the department an amount of money that reflects certain costs incurred by the department. The bill would make changes to the requirements relating to the imposition of assessments on behalf of a maintenance area by revising the definition of the term “operation and maintenance costs” to include additional costs. By including additional costs paid in maintenance areas within the purposes for which funds are continuously appropriated from the Water Resources Revolving Fund, the bill would make an appropriation.

The bill would authorize the board or the department to form a maintenance area for a project unit, or any portion of a project unit. The bill would provide that, if a maintenance area is formed for a portion of a project unit, any remaining portion of the project unit not included in the maintenance area shall remain the responsibility of the local agency obligated to operate and maintain that unit. The bill would authorize the board and the department to consolidate maintenance areas that share a common boundary.

~~By imposing duties on local public agencies and cities and counties in connection with the bill’s provisions, the bill would impose a state-mandated local program.~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) The central valley of this state is experiencing
4 unprecedented development, resulting in the conversion of
5 historically agricultural lands and communities to densely
6 populated residential and urban centers.

7 (b) The Legislature recognizes that by their nature, levees,
8 which are earthen embankments typically founded on fluvial
9 deposits, cannot offer complete protection from flooding, but can
10 decrease its frequency.

11 (c) The Legislature recognizes that the level of flood
12 protection afforded rural and agricultural lands by the original
13 flood control system is not considered adequate to protect those
14 lands when developed for urban uses, and that a dichotomous
15 system of flood protection for urban and rural lands has
16 developed through many years of practice.

17 (d) The Legislature further recognizes that levees built to
18 reclaim and protect agricultural land may be inadequate to
19 protect urban development unless those levees are significantly
20 improved.

21 (e) Local agencies are primarily responsible for making land
22 use decisions in the state, and the Legislature intends that they
23 retain that lead role.

24 (f) Local agencies rely upon federal flood plain information
25 when approving developments, but the information available is
26 often out-of-date and the flood risk may be greater than that
27 indicated using available federal information.

(g) Floodplain management tools such as floodplain mapping, the national flood insurance program, and the designated floodway program, represent important supplemental activities to educate the public about, and protect the public from, flood hazards.

(h) It is necessary for the state to immediately undertake the task of mapping flood plains and submitting up-to-date information to the federal government so that the federal National Flood Insurance Program maps reflect current and accurate conditions. In this way, the public can be provided with reliable information regarding flooding potential, and local agencies can make informed land use and flood management decisions so that the risk to life and property can be effectively reduced.

(i) The Legislature also recognizes the difficulty in obtaining necessary funds for levee maintenance and operations at both the state and local levels.

(j) It is the intent of the Legislature to establish a stable funding source at the state level for levee maintenance and operations in the Sacramento and San Joaquin Valleys through the use of assessments to supplement both local funds and appropriations from the General Fund.

SEC. 2. Section 8306 is added to the Water Code, to read:

8306. (a) Notwithstanding any other provision of law, the department may provide meals and other necessary support to any person, including, but not limited to, an employee of the department, who is engaged in emergency flood fight activities on behalf of, or in cooperation with, the department.

(b) For the purposes of this section, “emergency flood fight activities” mean actions taken under emergency conditions to maintain flood control features, the failure of which threaten to destroy life, property, or resources.

SEC. 3. Section 8612 is added to the Water Code, to read:

8612. (a) On or before December 31, 2007, the department shall prepare, and the board shall adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage.

(b) The department shall update the schedule annually and shall present the updated schedule to the board for adoption on or before December 31 of each year. The update shall include the

1 status of mapping projects in progress and an estimated time of
2 completion. The schedule shall be based on the present and
3 expected future risk of flooding and associated consequences.

4 SEC. 4. Section 8613 is added to the Water Code, to read:

5 8613. (a) The board or the department may establish a
6 program of mitigation banking for the activities of the board or
7 the department under this part and for the benefit of local districts
8 in the discharge of their flood control responsibilities under this
9 part and the State Water Resources Law of 1945 (Chapter 1
10 (commencing with Section 12570) and Chapter 2 (commencing
11 with Section 12639) of Part 6 of Division 6).

12 (b) For the purposes of carrying out subdivision (a), the board
13 or the department, in consultation with all appropriate state,
14 local, and federal agencies with jurisdiction over environmental
15 protection that are authorized to regulate and impose
16 requirements upon the flood control work performed under this
17 part or the State Water Resources Law of 1945 (Chapter 1
18 (commencing with Section 12570) and Chapter 2 (commencing
19 with Section 12639) of Part 6 of Division 6), may establish a
20 system of mitigation banking by which mitigation credits may be
21 acquired in advance for flood control work to be performed by
22 the board, the department, or a local agency authorized to operate
23 and maintain facilities of the State Plan of Flood Control.

24 ~~SEC. 5. Chapter 5.5 (commencing with Section 8865) is~~
25 ~~added to Part 4 of Division 5 of the Water Code, to read:~~

26
27 ~~CHAPTER 5.5. MAINTENANCE OF PROJECT LEVEES~~

28
29 ~~Article 1. General Provisions and Definitions~~

30
31 ~~8865. (a) The Legislature finds and declares that there has~~
32 ~~been disagreement about whether the state or local agencies are~~
33 ~~responsible to pay for the repair of bank and levee erosion on~~
34 ~~project levees.~~

35 ~~(b) It is the intent of the Legislature that state funding and~~
36 ~~assessments on lands benefited be used to pay these costs.~~

37 ~~8865.2. The Legislature finds and declares all of the~~
38 ~~following:~~

39 ~~(a) Lands protected by the State Plan of Flood Control within~~
40 ~~the Sacramento Valley are specially benefited by work~~

1 performed or managed by the state within the Sacramento Valley
2 under Section 8866.

3 (b) ~~Lands protected by the State Plan of Flood Control within~~
4 ~~the San Joaquin Valley are specially benefited by work~~
5 ~~performed or managed by the state within the San Joaquin Valley~~
6 ~~under Section 8866.~~

7 (c) ~~Lands protected by the State Plan of Flood Control as a~~
8 ~~whole are specially benefited by all of the following:~~

9 (1) ~~Notification pursuant to Section 9121.~~

10 (2) ~~The preparation of the state report pursuant to Section~~
11 ~~9141.~~

12 (3) ~~The preparation and collection of assessments and the~~
13 ~~undertaking of the work authorized by this chapter.~~

14 (d) ~~Due to the systemic and interdependent nature and~~
15 ~~function and systemwide benefit of the State Plan of Flood~~
16 ~~Control to protect the lands protected by the State Plan of Flood~~
17 ~~Control, an assessment may be properly and fairly levied upon~~
18 ~~the lands protected by the State Plan of Flood Control for the~~
19 ~~purposes described in subdivisions (a), (b), and (c).~~

20 8865.4. ~~Lands that are being assessed by local agencies for~~
21 ~~the operation and maintenance of a project levee by a local levee~~
22 ~~district shall be deemed to be protected by the State Plan of~~
23 ~~Flood Control, unless the board, based on evidence provided by~~
24 ~~the department and other interested persons, determines that the~~
25 ~~lands are not benefited by the State Plan of Flood Control.~~

26 8865.6. ~~For the purpose of this chapter, “extraordinary~~
27 ~~maintenance” means the repair of bank and levee erosion on~~
28 ~~project levees, stability remediation of project levees, and~~
29 ~~sediment removal from project channels and floodways.~~
30 ~~“Extraordinary maintenance” does not include the repair or~~
31 ~~maintenance of facilities identified in Section 8361.~~

32 Article 2. ~~Authority to Undertake Extraordinary Maintenance~~

33 8866. ~~The board or department may adopt plans and~~
34 ~~estimates of costs for extraordinary maintenance and may carry~~
35 ~~out those plans.~~

36 8866.2. (a) ~~It is the intent of the Legislature that the costs of~~
37 ~~maintenance and extraordinary maintenance performed by the~~
38 ~~board or the department shall be paid for by funds raised by the~~
39

1 ~~assessments levied under Article 3 (commencing with Section~~
2 ~~8867), by appropriations from the General Fund, and by other~~
3 ~~funding sources as appropriate.~~

4 ~~(b) The board or department may have extraordinary~~
5 ~~maintenance work performed by the local maintenance agency~~
6 ~~under contract with, and under the direction of, the board or the~~
7 ~~department.~~

8
9 ~~Article 3. Assessments to Support Extraordinary Maintenance~~
10

11 ~~8867. (a) Notwithstanding Chapter 5 (commencing with~~
12 ~~Section 8750), the board may levy special benefit assessments~~
13 ~~upon lands protected by the State Plan of Flood Control for the~~
14 ~~following:~~

15 ~~(1) For preparation of plans for extraordinary maintenance~~
16 ~~prepared in accordance with Article 2 (commencing with Section~~
17 ~~8866).~~

18 ~~(2) For the costs of extraordinary maintenance.~~

19 ~~(3) For the costs of the state reports and of notices made to~~
20 ~~landowners within the levee flood protection zone pursuant to~~
21 ~~Article 2 (commencing with Section 9120) of Chapter 9.~~

22 ~~(4) For the preparation of reports pursuant to Section 9141.~~

23 ~~(5) For recovery of the costs of levying the assessment.~~

24 ~~(b) There shall be a separate special benefit assessment for~~
25 ~~extraordinary maintenance for lands in the Sacramento Valley~~
26 ~~and a separate special benefit assessment for extraordinary~~
27 ~~maintenance for lands in the San Joaquin Valley.~~

28 ~~(c) Except as provided in subdivision (d), the assessments for~~
29 ~~lands in the Sacramento Valley to be levied in any fiscal year~~
30 ~~shall not be levied before July 1, 2009, and shall not exceed an~~
31 ~~aggregate amount of ten million dollars (\$10,000,000) per year.~~

32 ~~(d) The assessments for lands in the Sacramento Valley to be~~
33 ~~levied in any fiscal year on or after July 1, 2017, shall not exceed~~
34 ~~an aggregate amount of twenty million dollars (\$20,000,000) per~~
35 ~~year.~~

36 ~~(e) The assessments for lands in the San Joaquin Valley to be~~
37 ~~levied in any fiscal year shall not be levied before July 1, 2009,~~
38 ~~and shall not exceed an aggregate amount of one million dollars~~
39 ~~(\$1,000,000) per year.~~

1 ~~(f) Except as provided in subdivision (f), the assessments for~~
2 ~~lands in the San Joaquin Valley to be levied in any fiscal year on~~
3 ~~or after July 1, 2017, shall not exceed an aggregate amount of~~
4 ~~two million dollars (\$2,000,000) per year.~~

5 ~~(g) Assessments for the Sacramento Valley and the San~~
6 ~~Joaquin Valley shall be accounted for separately.~~

7 ~~(h) Any unused funds shall be carried over for expenditure in~~
8 ~~subsequent years.~~

9 ~~(i) The assessment on an area shall be reduced by the amount~~
10 ~~of funds that are expended by a local agency on extraordinary~~
11 ~~maintenance within the area in the prior fiscal year, and are~~
12 ~~documented by the local agency and approved by the department.~~

13 ~~(j) On or before February 1 of each year, each county shall~~
14 ~~provide to the department or the board updated assessor's rolls~~
15 ~~for those lands identified by the department or the board as~~
16 ~~receiving protection from facilities of the State Plan of Flood~~
17 ~~Control. The department or board shall use the updated~~
18 ~~assessors' rolls to allocate assessments to all assessable lands in~~
19 ~~the same manner, as if there were no county lines.~~

20 ~~(k) Notwithstanding the requirements of Chapter 4.5~~
21 ~~(commencing with Section 12878) of Part 6 of Division 6, the~~
22 ~~department or board shall determine the total assessment to be~~
23 ~~levied within each county and shall submit that assessment to~~
24 ~~each affected county.~~

25 ~~8867.2. A special benefit assessment for extraordinary~~
26 ~~maintenance shall not be levied on lands protected by a discrete~~
27 ~~levee if the local agency operating and maintaining the levee~~
28 ~~does both of the following:~~

29 ~~(a) Enters into an agreement with the board or the department~~
30 ~~stating that the local agency will take responsibility for~~
31 ~~extraordinary maintenance.~~

32 ~~(b) Undertakes and performs the work in a manner determined~~
33 ~~to be reasonable by the board.~~

34 ~~8867.4. The board shall adopt regulations for establishing,~~
35 ~~allocating, and levying assessments. Except as otherwise~~
36 ~~specified in this article, the regulations shall be consistent with~~
37 ~~the procedures utilized for establishing, allocating, and levying~~
38 ~~assessments to support maintenance areas established pursuant to~~
39 ~~Chapter 4.5 (commencing with Section 12878) of Part 6 of~~
40 ~~Division 6.~~

1 ~~8867.6. The county in which the assessed lands are located~~
2 ~~shall collect, on behalf of the board, the amounts certified by the~~
3 ~~department to be raised pursuant to its levy of assessments under~~
4 ~~this article.~~

5 ~~SEC. 6.~~

6 SEC. 5. Chapter 9 (commencing with Section 9110) is added
7 to Part 4 of Division 5 of the Water Code, to read:

8
9 CHAPTER 9. REPORTS

10
11 Article 1. Definitions

12
13 9110. Unless the context requires otherwise, the definitions
14 set forth in this article govern the construction of this chapter.

15 (a) "Fiscal year" has the same meaning as that set forth in
16 Section 13290 of the Government Code.

17 (b) "Levee flood protection zone" means the area, as
18 determined by the board or the department, that is protected by a
19 project levee.

20 (c) "Local agency" means a local agency responsible for the
21 maintenance of a project levee.

22 (d) "Maintenance" has the same meaning as that set forth in
23 subdivision (f) of Section 12878.

24
25 Article 2. State Reports

26
27 9120. (a) The department shall prepare and the board shall
28 adopt a flood control system status report for the State Plan of
29 Flood Control. This status report shall be updated periodically, as
30 determined by the board. For the purposes of preparing the
31 report, the department shall inspect the project levees and review
32 available information to ascertain whether there are evident
33 deficiencies.

34 (b) The status report shall include identification and
35 description of each facility, an estimate of the risk of levee
36 failure, a discussion of the inspection and review undertaken
37 pursuant to subdivision (a), and appropriate recommendations
38 regarding the levees and future work activities.

1 (c) The status report shall identify deficiencies in the state plan
2 for flood control and shall include recommendations for
3 resolving those deficiencies.

4 (d) On or before December 31, 2007, the board shall advise
5 the Legislature, in writing, as to the board's schedule of
6 implementation of this section.

7 9121. (a) On or before September 1, 2009, and on or before
8 September 1 of each year thereafter, the department shall provide
9 written notice to each landowner whose property is determined to
10 be entirely or partially within a levee flood protection zone.

11 (b) The notice shall include statements regarding all of the
12 following:

13 (1) The property is located behind a levee.

14 (2) Levees reduce, but do not eliminate, the risk of flooding
15 and are subject to catastrophic failure.

16 (3) If available, the level of flood risk as described in the flood
17 control system status report described in Section 9120 and a
18 levee flood protection zone map prepared in accordance with
19 Section 9130.

20 (4) The State of California recommends that property owners
21 in a levee flood protection zone obtain flood insurance, such as
22 the insurance provided by the Federal Emergency Management
23 Agency through the National Flood Insurance Program.

24 (5) Information about purchasing federal flood insurance.

25 (6) The Internet address of the Web site that contains the
26 information required by the flood management report described
27 in Section 9141.

28 (7) Any other information determined by the department to be
29 relevant.

30 (c) A county, with assistance from the department, shall
31 annually provide to the department, by electronic means, lists of
32 names and addresses of property owners in a levee flood
33 protection zone located in that county.

34 (d) Notwithstanding any other provision of the law, the
35 department may enter into contracts with private companies to
36 provide the notices required by this section.

37 9122. The board shall determine the areas benefited by
38 facilities of the State Plan of Flood Control based on information
39 developed by the department.

Article 3. Levee Flood Protection Zone Maps

9130. (a) The department shall prepare, update, and maintain maps for levee flood protection zones. The maps shall include flood depth contours determined by the department if that information is available.

(b) The department shall distribute the levee flood protection zone maps to appropriate governmental agencies, as determined by the department.

(c) The department shall make the maps readily available to the public. The department may charge a fee for the cost of reproducing the maps.

Article 4. Local Reports

9140. (a) On or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee shall prepare and submit to the department, in a format specified by the department, a report of information for inclusion in periodic flood management reports prepared by the department relating to the project levee. The information submitted to the department shall include all of the following:

(1) Information known to the local agency that is relevant to the condition or performance of the project levee.

(2) Information identifying known conditions that might impair or compromise the level of flood protection provided by the project levee.

(3) A summary of the maintenance performed by the local agency during the previous fiscal year.

(4) A statement of work and estimated cost for operation and maintenance of the project levee for the current fiscal year, as approved by the local agency.

(5) Any other information relevant to the condition or performance of the project levee, as determined by the board or the department.

(b) A local agency described in subdivision (a) that operates and maintains a nonproject levee that also benefits land within the boundaries of the area benefited by the project levee shall include information pursuant to subdivision (a) with regard to the nonproject levee.

(c) A local agency that incurs costs for the maintenance or improvement of a project or nonproject levee under the delta levee maintenance subventions program established pursuant to Part 9 (commencing with Section 12980) of Division 6 may submit information submitted to satisfy the requirements of that program to meet the requirements of paragraph (3) of subdivision (a), but may do so only for that reach of the levee included in that program.

(d) (1) A local agency responsible for the operation and maintenance of a levee not otherwise subject to this section may voluntarily prepare and submit to the department or the board a flood management report for posting on the Internet Web site of the department or the board.

(2) A flood management report submitted pursuant to paragraph (1) shall be made available on the Internet Web site of the board if the local agency is partially or wholly within the geographical boundaries of the board's jurisdiction. Otherwise, the report shall be made available on the Internet Web site of the department.

9141. (a) The department shall prepare and transmit to the board a report on the project levees operated and maintained by each local agency, using information provided by the local agency pursuant to Section 9140 and information from relevant portions of any of the following documents, as determined by the department:

(1) Annual inspection reports on local agency maintenance prepared by the department or the board.

(2) The State Plan of Flood Control.

(3) The flood control system status report described in Section 9120.

(4) The schedule for mapping described in Section 8612.

(5) Any correspondence, document, or information deemed relevant by the department.

(b) The department shall make the flood management report for each local agency available on the Internet Web site of the board and shall provide the report to all of the following entities:

(1) The local agency.

(2) Any city or county within the local agency's jurisdiction.

(3) Any public library located within the local agency's jurisdiction.

1 (c) The report shall be completed on or before December 31,
2 2007, and shall be updated annually.

3 9142. A local agency responsible for the operation and
4 maintenance of a project levee may propose to the board an
5 upgrade of the project levee if the local agency determines that
6 the upgrade is appropriate. The local agency may implement that
7 upgrade if approved by the board.

8 ~~SEC. 7.~~

9 *SEC. 6.* Section 12585.11 is added to the Water Code, to
10 read:

11 12585.11. Upon appropriation by the Legislature therefor, the
12 department or the board may advance funds to the federal
13 government or perform flood control and environmental
14 restoration project planning, design, and construction in advance
15 of the federal government and seek reimbursement or credit from
16 the federal government for the cost of that work determined by
17 the federal government to be eligible for reimbursement or credit.

18 ~~SEC. 8.~~

19 *SEC. 7.* Section 12585.12 is added to the Water Code, to
20 read:

21 12585.12. The department or board may participate with the
22 federal government or local agencies in the design of
23 environmental enhancements associated with a federal flood
24 control project and participate in the construction of
25 environmental enhancements associated with a federal flood
26 control project for which the state has authorized state
27 participation. The state shall pay 50 percent of the nonfederal
28 share of environmental enhancement.

29 ~~SEC. 9.~~

30 *SEC. 8.* Section 12878 of the Water Code is amended to read:

31 12878. Unless the context otherwise requires, the definitions
32 set forth in this section govern the construction of this chapter:

33 (a) "Department" means Department of Water Resources.

34 (b) "Director" means the Director of Water Resources.

35 (c) "Board" means the Reclamation Board.

36 (d) Wherever the words "board or department" or "board or
37 director" are used together in this chapter they shall mean the
38 board as to any project in the Sacramento or San Joaquin Valleys
39 or on or near the Sacramento River or the San Joaquin River or
40 any of their tributaries, and the department or the director as to

1 any project in any other part of the state outside of the
2 jurisdiction of the board.

3 (e) “Project” means any project that has been authorized
4 pursuant to Chapter 2 (commencing with Section 12639) or
5 Chapter 4 (commencing with Section 12850) and concerning
6 which assurances have been given to the Secretary of the Army
7 or the Secretary of Agriculture that the state or a political
8 subdivision thereof will operate and maintain the project works
9 in accordance with regulations prescribed by the federal
10 government or any project upon which assurances have been
11 given to the Secretary of the Army and upon which the United
12 States Army Corps of Engineers has performed work pursuant to
13 Section 208 of Public Law 780, 83rd Congress, 2nd Session,
14 approved September 3, 1954.

15 (f) “Maintenance” means work described as maintenance by
16 the federal regulations issued by the Secretary of the Army or the
17 Secretary of Agriculture for any project.

18 (g) “Maintenance area” means described or delineated lands
19 that are found by the board or the department to be benefited by
20 the maintenance and operation of a particular unit of a project.

21 (h) “Unit” means any portion of the works of a project
22 designated as a unit by the board or the department, other than
23 the works prescribed in Section 8361, or works operated and
24 maintained by the United States.

25 (i) “Land” includes improvements.

26 (j) “Local agency” means and includes all districts or other
27 public agencies responsible for the operation of works of any
28 project under Section 8370, Chapter 2 (commencing with Section
29 12639) or Chapter 4 (commencing with Section 12850) or any
30 other law of this state.

31 (k) “Cost of operation and maintenance” means, for the
32 purposes of maintenance areas established after July 31, 2004, as
33 the result of relinquishment by a local agency pursuant to Section
34 12878.1 only, the cost of all maintenance, as defined in
35 subdivision (f), and shall also include, but is not limited to, all
36 costs incurred by the department or the board in the formation of
37 the maintenance area other than those costs paid by the local
38 agency pursuant to subdivision (c) of Section 12787.1.

39 (l) “Cost of operation and maintenance” means, for the
40 purposes of all maintenance areas, without regard to the date of

1 formation, the cost of all maintenance, as defined in subdivision
2 (f), and shall also include, but is not limited to, all of the
3 following costs:

4 (1) Any costs of defending any action brought against the
5 state, the department, or the board, or any employees of these
6 entities, for damages arising from the maintenance activities of
7 the department or from flooding in the maintenance area.

8 (2) Any costs incurred in the payment of any judgment or
9 settlement of an action against the state, the department, or the
10 board, or any employees of these entities, for damages arising
11 from the formation of the maintenance area or from any
12 maintenance activities of the department or flooding in the
13 maintenance area.

14 ~~SEC. 10.~~

15 *SEC. 9.* Section 12878.1 of the Water Code is amended to
16 read:

17 12878.1. (a) Whenever the board or the department finds that
18 a unit of a project or any portion of a unit of a project is not being
19 operated or maintained in accordance with the standards
20 established by federal regulations or whenever the governing
21 body of a local agency obligated to operate and maintain that unit
22 by resolution duly adopted and filed with the department declares
23 that it no longer desires to operate and maintain the unit, the
24 department shall prepare a statement to that effect specifying in
25 detail the particular items of work necessary to be done in order
26 to comply with the standards of the federal government together
27 with an estimate of the cost thereof for the current fiscal year and
28 for the ensuing fiscal year.

29 (b) Subject to subdivision (c), but notwithstanding any other
30 provision of law, the board or the department is not required to
31 proceed in accordance with subdivision (a) or with the formation
32 of a maintenance area under this chapter if neither the board nor
33 the department has given the nonfederal assurances to the United
34 States required for the project. If neither the board nor the
35 department has given the nonfederal assurances to the United
36 States required for the project, the board or department may elect
37 to proceed with the formation if it determines that the formation
38 of a maintenance area is in the best interest of the state.

39 (c) If a local agency requests the department to form a
40 maintenance area by resolution duly adopted and filed with the

1 department, the department shall estimate the cost of preparing
2 the statement of necessary work and the cost thereof, and all
3 other applicable costs incurred by the department before the
4 formation of the maintenance area. The department shall submit
5 that estimate to the local agency. The department shall not
6 perform any additional work to form that maintenance area until
7 the local agency pays the department the amount estimated
8 pursuant to this subdivision.

9 ~~SEC. 11.~~

10 *SEC. 10.* Section 12878.21 of the Water Code is amended to
11 read:

12 12878.21. Upon the formation of a maintenance area, the
13 department shall thereafter operate and maintain the unit until
14 such time as the maintenance area may be dissolved pursuant to
15 this chapter. If the board or the department forms a maintenance
16 area for a portion of a unit of a project, any remaining portion of
17 the unit of a project not included in the maintenance area shall
18 remain the responsibility of the local agency obligated to operate
19 and maintain that unit.

20 ~~SEC. 12.~~

21 *SEC. 11.* Section 12878.23 of the Water Code is amended to
22 read:

23 12878.23. (a) The boundaries of any established maintenance
24 area or zones within the maintenance area, the description of
25 works to be maintained within the maintenance area, and the
26 determination of relative benefits within any zone may be
27 modified by the board or the department upon its own initiative
28 or upon petition by the governing body of the local agency
29 formerly responsible for the operation and maintenance of the
30 unit or by the board of supervisors of the county in which all or a
31 portion of the unit is located.

32 (b) The board or the department may consolidate maintenance
33 areas that share a common boundary.

34 ~~SEC. 13.~~

35 *SEC. 12.* If the Commission on State Mandates determines
36 that this act contains costs mandated by the state, reimbursement
37 to local agencies and school districts for those costs shall be

- 1 made pursuant to Part 7 (commencing with Section 17500) of
- 2 Division 4 of Title 2 of the Government Code.

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